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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 ANTOLIN ANDREW MARKS,

14 Plaintiff,

15 v.

16 DOE ALBIN et al.,

17 Defendants.

18 Case No. C06-5675RBL

19 REPORT AND
20 RECOMMENDATION TO
21 DENY PLAINTIFF'S
22 MOTION FOR DEFAULT

23 NOTED FOR:

24 **DECEMBER 7, 2007**

25 This Bivens action has been referred to the undersigned Magistrate Judge pursuant to Title 28
26 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion /notice of default (Dkt. # 27). Defendants
27 have answered the complaint and filed a counter claim and are not in default at this time (Dkt # 28).
28 Accordingly, the motion should be **DENIED**.

29 FACTS

30 This action was commenced on November 17, 2006, when plaintiff filed a motion to proceed *in*
31 *forma pauperis* and a proposed complaint (Dkt. # 1). In August of 2007, the court ordered service (Dkt #
32 21). Over the next several months, counsel appeared on behalf of defendants but no answer was filed. On
33 November 6, 2007, plaintiff moved for default and on November 9, 2007, an answer and counter claim

1 were filed (Dkt # 27 and 28).

2 DISCUSSION

3 As defendants have filed an answer, they are not in default at this time. Default judgments are
4 disfavored by the law and cases should be decided on their merits except in extreme cases. Mendoza v.
5 Wight Vineyard Management, 783 F.2d 941, 945-46 (9th Cir. 1986). The motion for default should be
6 **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
7 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
8 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
9 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
10 set the matter for consideration on **December 7, 2007**, as noted in the caption.

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13 DATED this 14 day of November, 2007.

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15 /S/ J. Kelley Arnold
16 J. Kelley Arnold
United States Magistrate Judge
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